

2. Amendment of Claims:

Claim(s) 1, 2, and 5 were rejected under 35 U.S.C. 102(b) as being anticipated by Cutlip (4,974,574). According to the Examiner, Cutlip discloses a ball throwing apparatus (1) comprising an elongated shaft (2) Fig. 1, having a longitudinal axis and opposite distal and proximal ends (Fig. 5), a ball engaging means (4) Fig. 1 integrally formed on the distal end of shaft with means for releasing the ball when swung in a circular path. The ball engaging means is a half-spherical structure (4) with an opening capable of snap fitting around a ball (Fig. 1).

The Examiner also found that Cutlip further discloses a method of playing the game of fetch, which includes the following steps: selecting an elongated shaft (13) with opposite distal and proximal ends (Fig. 5) and having a ball engaging means (4) disposed at the distal end, where the ball engaging means is capable of engaging a ball without the aid of one's hands or fingers and capable of releasing a ball when the shaft is swung (Fig. 1), holding the proximal end of shaft, attaching a ball to the ball engaging means while holding the proximal end of shaft, attaching a ball to the ball engaging means while holding the proximal end of shaft, sufficiently swinging shaft while holding the proximal end, thereby causing the ball to be released from the ball engaging means.

Claim(s) 3 and 4 were rejected under 35 U.S.C. 103(a) as being unpatentable over Cutlip (4,974,574). The Examiner found that Cutlip teaches all the elements of the art as mentioned above, but that Cutlip does not clearly state that the ball throwing apparatus (1) has an elongated shaft (13) which is rearwardly curved, and wherein the opening of the half-spherical structure is aligned approximately 5 degrees forward and approximately 33 degrees behind the longitudinal axis of shaft.

1 When referring to Fig. 3, shaft 13, and Fig. 5, ball throwing apparatus (1), the
2 Examiner found that both figures clearly show an arcuate shaft (13) which is rearwardly
3 curved, and that as a result of the arcuate semi-rigid shaft (13) the half-spherical structure
4 (17) is aligned at an angle with the longitudinal axis of the shaft.

5 The Examiner found that it would have been obvious to one of ordinary skill in the art
6 to utilize the slight bending of the shaft and the angled relationship of the half-spherical
7 structure with the shaft to allow the ball to be picked more readily.

8 In response, Claims 1 and 5 have been amended and Claims 2 and 4 have been
9 cancelled. Claims 1 (Once Amended) and Claim 5 (Once Amended) have been amended to
10 correct §112, second paragraph errors, found on review. Claim 1 (Once Amended) also
11 includes the limitation originally cited in Claims 2 and 4. Reconsideration of Claims 1 (Once
12 Amended), 3, and 5 (Once Amended) is hereby requested for the following reasons:

13 1. Claims 1 (Once Amended) and 5 (Once Amended) recite novel features not
14 found on Cutlip (4,974,574):

15 It is noted that none of the references cited by the Examiner disclose devices used to
16 play fetch with an animal using a standard size tennis ball.

17 The Applicant submits that Cutlip discloses a multiple disc launcher comprising a
18 single handle with two c-shaped heads formed on the distal end of the handle. Each head is
19 u-shaped in cross-section (see Col. 4, lines 10-20) and designed specifically to receive a flat
20 disc and not a ball. Unlike Applicant's device, each head faces rearward with respect to the
21 direction of swing.

22 An important feature of Applicant's device is the ability to snap-fit a ball into the
23 half-spherical structure without using the hand or fingers. Since the ball is covered with the

1 dog's saliva, this feature substantially increases the user's enjoyment of the game of fetch.
2 The snap-fitting feature enables a ball to be engage when dropped on the ground and then
3 temporarily held as the ball is pulled from under the animal. In some instances, the ball may
4 be engaged while the ball is in the dog's mouth. In Cutlip, each c-shaped head includes a
5 first straight leg that extends outward and prevents each head from snap-fitting around the
6 ball. To engage the ball, as suggested by the Examiner, the ball would have picked-up and
7 placed into the c-shaped head. Another feature on Cutlip, is the front leg of the c-shaped
8 head is curved slightly rearward which causes the user to use a "short arm" throwing
9 technique rather than a "full arm" technique used with the Applicant's device.

10 Other distinguishing features are the alignment of the half-spherical structure on the
11 shaft and the handle's rearwardly curve shape. Both features enables a user to easily reach
12 under the dog while standing or knelling in front or to the sides of the animal. The ball can
13 be easily engaged and pulled from under the animal.

14 Because Cutlip does not disclose a structure or method identical to Claim 1 (Once
15 Amended) or Claim 5 (Once Amended), they are not anticipated by Cutlip.

16 2. The Structures recited in Claim 1 (Once Amended) and Claim 5 (Once
17 Amended) provide unexpected results, and should be considered non-obvious.

18 The use of a forward facing half-spherical structure with an opening approximately 5
19 degrees forward and approximately 33 degrees behind the shaft's longitudinal axis provides
20 unexpected results that support a finding of non-obviousness. As mentioned above, these
21 two features enable the user to easily engage a ball located on the ground without touching
22 the ball with his or her hands and then throw the ball great distances. The orientation of the
23 half-spherical structure on the shaft also enables a user to reach under the dog while the dog

1 is standing directly over the ball. During use, the shaft must be turned so that the half-
2 spherical structure faces directly downward over the ball. The half-spherical structure is then
3 lightly pressed downward to engage the ball. The ball is held inside the half-spherical
4 structure and then lifted upward and is ready to be thrown.

5 The elongated shaft and the orientation of the half-spherical structure, and the unique
6 engagement of the ball therein also enables users to throw the ball much further than usual
7 when playing fetch.

8 3. Commercial Success of the Apparatus supports a finding of Obviousness:

9 The apparatus has enjoyed great commercial success since it has been introduced.
10 during the last twelve months. Recently, the apparatus won the Editor's Choice Award in
11 *Dog Fancy*, January, 2000; Most notable product for the millennium award by *Dog World*,
12 December, 1999. and front cover article in *Pet Product News* business section of *Seattle*
13 *Post-Intelligencer*, July 29, 1999.

14 For all of the above reasons, reconsideration is hereby requested by Claims 1, 3, and

15 5.

16 Respectfully submitted,

17 
18 DEAN A. CRAINE

19 Reg. No. 33,591
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FEATURES

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Cover Story

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A Nose for Noshing

Beagles live to eat but love their pack just as much.

By Eve Adamson

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100 Great Dog Moments of the Century

Dogs soar into history ... and into our hearts.

By Sally Deneen, Arden Moore,

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Editors' Choice Awards

We salute makers of the most innovative dog products of 1999.



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Guys & Dogs

They share a loving bond as buddies, partners and mutual entertainers.

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Your Guide to Day Care

Choose a center, pet sitter, kennel, walker or pet door to keep your dog happy while you're at work.

By Judith Reitman



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A Spirited Hungarian Import

True to its herding roots, the Pumi stays on the move.

By Ted Curtis

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Forever Young

With more years as the No. 1 dog than any other breed, the Cocker Spaniel remains an American sweetheart.

By Susan Bertram, DVM

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Millennium Issue

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JANUARY 2000

DOG FANCY

DOG FANCY®

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Dog Moments

12 BEST
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GUYS & DOGS
A Photo Essay

Easy Solutions
to Day Care

30
Anniversary Year

Beagle

**American
Cocker Spaniel**
AND: Pumi



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Dry Idea

Throw farther than you ever imagined without ever touching the slimy tennis ball. At the end of a 26-inch long handle Chuckit's special claw holds the ball until your overhand toss releases it. With a little practice, you can throw longer than 100 feet. Available in red, blue, green, black, purple and orange.

★ \$14.95

★ Canine Hardware Inc., 19025 66th Ave. South, Kent, WA 98032; (800) 660-9033, (425) 427-9033; www.caninehardware.com

All Night Warmth

Conventional hot water bottles cool after a few hours. Worse, as they cool they can actually draw heat away from a young or sick pet. The Snuggle Safe heat pad solves this problem. After six to seven minutes in the microwave, it gives out steady heat for up to 12 hours. A hard scratch- and bite-resistant plastic exterior protects the non-toxic heat conducting material inside. It comes with a two-year guarantee and instruction manual.

★ \$27 to \$36

★ Pet Supply Imports Inc., 16975 Westview, South Holland, IL 60473; (800) 346-1369, (708) 596-1705.

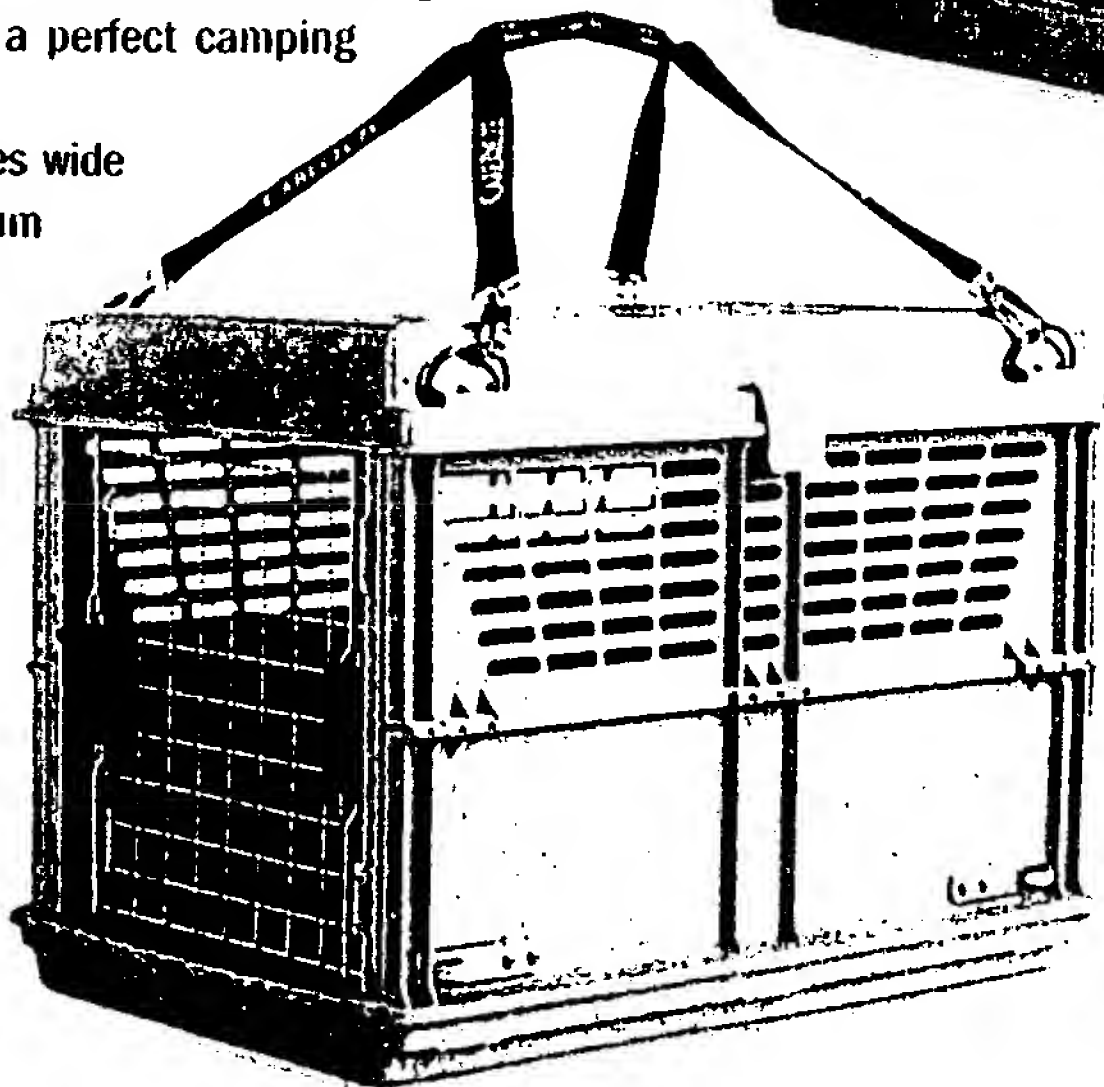
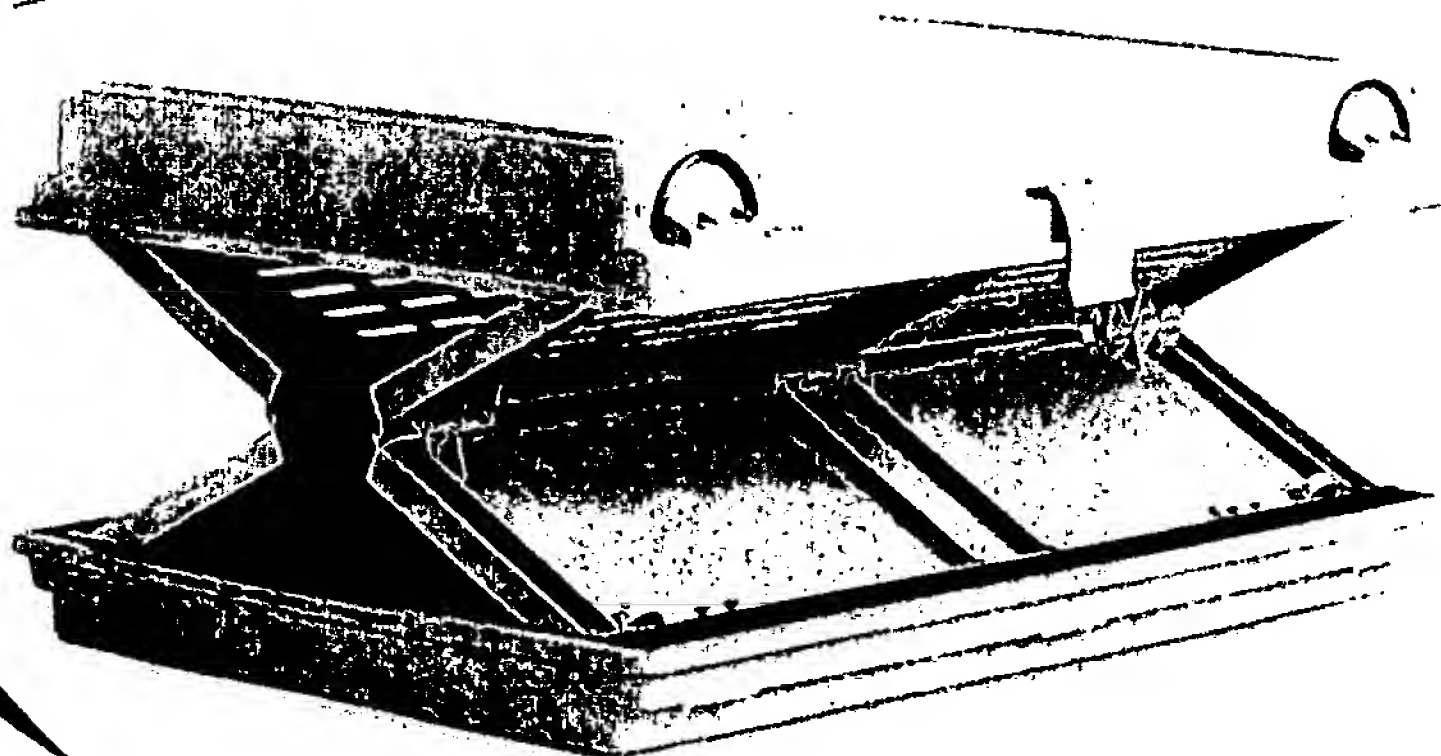


Pickup and Go

The Care-eze Pet Carrier combines the space-saving capacity of a folding metal crate with the light weight of a plastic pet carrier. Sturdy when assembled, the carrier folds to 4½ inches thick in less than a minute and includes straps to simplify carrying. Latches on both sides of its door allow opening from either side or removal of the door altogether. Water- and rust-resistant, the carrier makes an ideal companion to small, airline passenger cabin-approved carriers as well as a perfect camping accessory.

★ Small (20 inches long by 14 inches wide by 14 inches high), \$69.95; medium (27 by 20 by 21) and large (40 by 27 by 31) available in spring.

★ Zoologik., 13212 Saticoy St., North Hollywood, CA 91605; (800) 453-1463, (818) 255-5799; www.zoologik.com



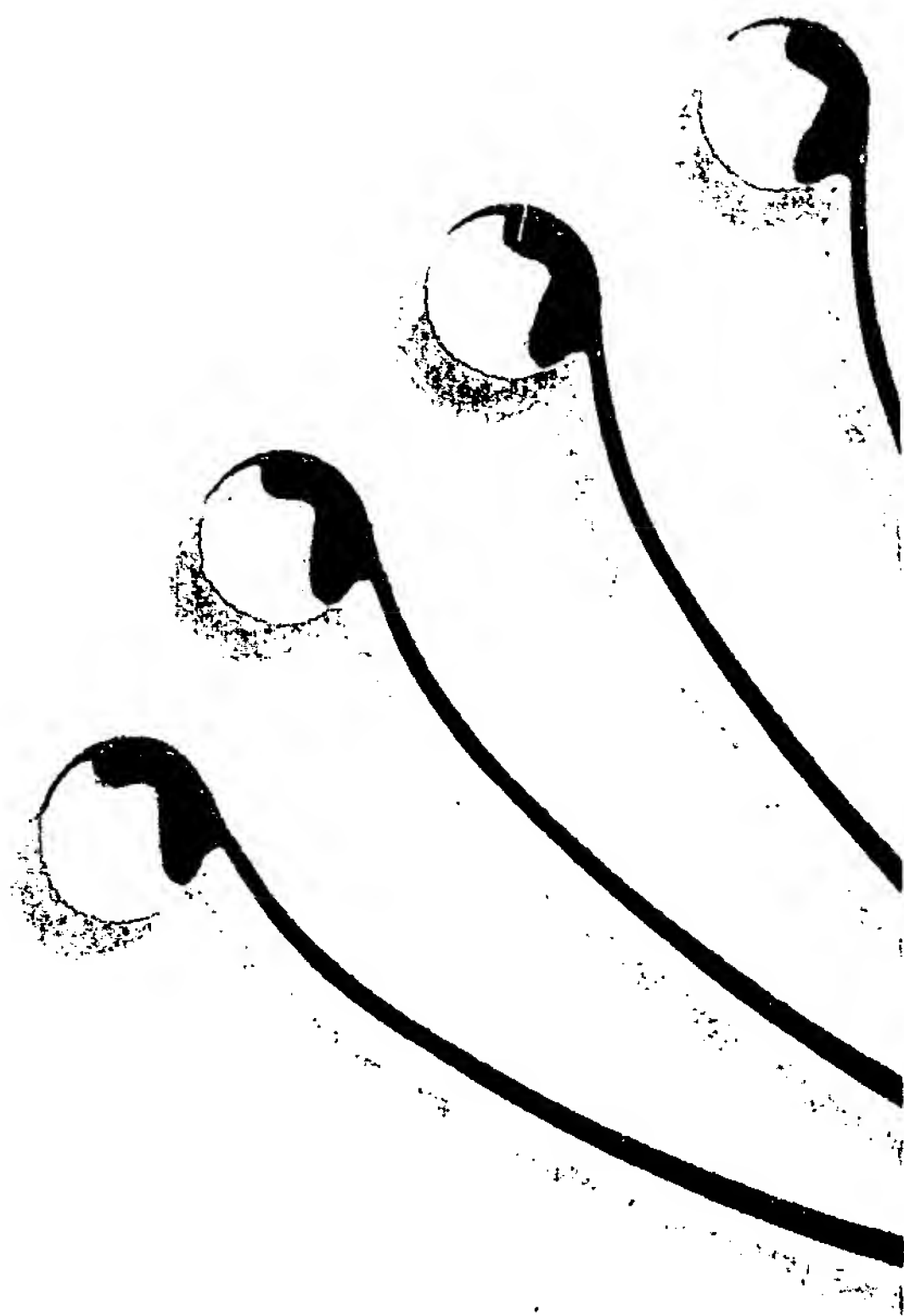


Editors' Choice Awards

We salute makers of the most innovative dog products of 1999.

Dog products introduced in 1999 reached new heights in inventiveness and diversity. Dog bowls abound but how about a space age spill-less one? Or a heating pad that stays warm all night? A fire hydrant and miniature park for your patio? Those were among dozens of products *DOG FANCY* editors and contributors examined in deciding our annual Editors' Choice Awards.

We spent an afternoon pulling, playing, prodding and evaluating products for their usefulness, durability, value and creativity. The ones we present here met our criteria and even more: They're the most innovative. Congratulations to our winners!



Barrel of Fun

We couldn't help but smile when we picked up the Wiggly Giggly. A shake or a roll caused the brightly colored ball to squeak and chuckle without batteries or squeezing. Available in a 4½-inch ball for small dogs and a 7-inch ball for large ones.

* Small, \$14.99; large \$21.99

* Multipet International Inc., 626 16th St., Carlstadt, NJ 07072; (201) 438-6600, (800) 900-6738; www.multipet.com; mpet1@aol.com



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30 Industrials 10,972.07 - 8.97	30-year Treasuries 6.00 - .01%	vs. Japanese Yen 116.12 yen - .24 yen

BUSINESS

Business digest

Compaq plans big job cuts in face of loss, slow sales

Compaq Computer Corp. plans to eliminate up to 8,000 jobs, or 12 percent of its work force, as it struggles to cut costs amid a \$184 million loss in the second quarter brought on by computer price wars and slowing sales.

The cuts unveiled yesterday are the first major move by chief executive officer and president Michael Capellas, promoted to the post just last week to turn around the No. 1 PC maker's flagging business.

The work force reduction, ranging from 6,000 to 8,000 jobs, comes on top of 17,000 jobs that Compaq already is shedding after it acquired Digital Equipment.

British Air, American deal reportedly will be scotched

British Airways Plc's planned alliance with AMR Corp.'s American Airlines will be dismissed by the U.S. Department of Transportation tomorrow, the Financial Times reported.

The application was rejected after U.S.-U.K. government talks for a transatlantic open-skies agreement stalled earlier this month. As part of the new agreement, British Airways, Europe's largest carrier, would have to give up lucrative slots at London's Heathrow Airport to competitors, the paper said.

BA and AA first announced their alliance in 1996, but scaled it back last year after plans, including coordination of pricing and schedules and sharing of revenues from transatlantic flights, were rejected by authorities in London and Brussels.

Accounting rule makers back off change for R&D

Accounting rule makers backed away from a proposal to end companies' ability to instantly write off costs of unfinished research and development projects acquired in mergers.

Edmund Jenkins, chairman of the Financial Accounting Standards Board, said talks with companies and the board's research proved the issue "is more complex than we had hoped." He said the board will likely decide next quarter when it should consider research and development accounting as a whole.

Technology, biotechnology and pharmaceutical companies had argued against changing the rule. Mergers in those industries, which totaled \$473.4 billion in value last year, usually involve the purchase of research and development projects in progress.

The board had wanted companies to treat acquired R&D as an asset, deducting the costs against earnings over time for as long as a product is being developed. That would have meant charges for several quarters, with a reduction in earnings each time. Companies would also have had to differentiate between their own and acquired R&D.

Shipping news

The Marine Exchange of Puget Sound says vessels expected to arrive through Saturday at the Port of Seattle include: **Hanjin Felixstowe**, Greek flag, today at Terminal 46 from Tokyo; **CSL Cabo**, Liberia, tomorrow at James Hardie terminal from Plummer Sound; **Mapag-Lloyd Hong Kong Express**, Germany, tomorrow at Terminal 18 from Nagoya; **Thordis**, Panama, tomorrow at Terminal 90 from New Zealand. Leaving: **Westwood Lago**, Bahamas, today from Terminal 5 for Vancouver, B.C.

Transactions

■ Moss Adams, the Seattle-based accounting firm, will merge with Yergen and Meyer of Portland. Moss Adams has 16 offices, 100 partners and revenues of more

Boeing says it can't guarantee jobs

Security at heart of talks with Machinists

By PAUL NYHAN
PI REPORTER

The Boeing Co. can't afford to guarantee job levels or promise to stop searching for firms to help it build airplanes as part of any new contract with its Machinists, Jerry Calhoun, Boeing's top labor negotiator, told managers yesterday.

Earlier this month, Boeing and the International Association of Machinists sat down to craft a new contract for roughly 49,000 workers. At the heart of the negotiations is the security of jobs at the world's largest airplane manufacturer.

The company is striving to become a leaner corporation, while union members are struggling with layoffs and outside companies that consume a portion of the company's work and jobs.

In an e-mail to Boeing managers obtained by the Post-Intelligencer, Calhoun argued that guaranteeing job levels at Boeing won't solve either side's problems because it threatens the company's existence. Preserving and enhancing Boeing's ability to compete in the airplane business is the best way to protect jobs, he wrote.

"In the highly cyclical aerospace industry, across-the-board guaranteed employment levels are a prescription for disaster," Calhoun wrote. "In those cases where more efficient operations are available outside the company, it is only prudent that we explore that option."

Union leaders said they're aware the cycles of the aerospace industry can lead to layoffs. However, they are calling on the company to limit the use of outside firms and to provide other

assurances about future employment at Boeing.

"If they don't address job security in a manner that is satisfactory for the members, they are going to have a problem," said Bill Johnson, the head of the IAM's District Lodge 751.

The issue of job security looms as perhaps the most explosive item in the sensitive negotiations. Johnson suggested that Machinists could walk off the job if the issue isn't addressed.

"Our members are fired up," Johnson said. Boeing, on the other hand, is striving to balance these demands with calls from investors to create a more efficient and competitive multinational company.

"To succeed we must conduct our operations in the most efficient, cost-effective manner possible," Calhoun wrote.

Financial analysts say Boeing should main-



See BOEING, Page D5

A clean game of fetch



PHIL H. WEBBER/PI PHOTOS

Chester, a Chesapeake Bay retriever, jumps in the air for a chance at the tennis ball that's locked in the claw of the Chuckit! The device allows Mariel Head to throw tennis balls cleaner and farther. The ball snaps into place and releases from the claw, so a dog's owner doesn't have to touch the messy, slobbery ball. Head is a co-owner of the Issaquah-based Canine Hardware Inc., which sells several devices like the \$15 Chuckit!. Head and her husband, Mark Oblack, have sold more than 10,000 Chuckits! this year. Canine Hardware sells its products at the Three Dog Bakery in downtown Seattle and at several Pet Pros stores around the area.



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PET PRODUCT NEWS

THE LEADER
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Retail Update

October 1999 \$5.00

Volume 53 No. 11

INDUSTRY UPDATE

What's Next For Iams?

BY ROMY JACOBSON AND BOB BUTTITTA

SOME MIGHT say Procter & Gamble's combination of cosmetics, cleaners and paper goods was eclectic enough. Some might even wonder why the Cincinnati-based product marketer decided to make its already diverse collection of brands even broader by acquiring Dayton, Ohio-based Iams Co., maker of Iams and Eukanuba brand pet food for dogs and cats. For Procter & Gamble, the Aug. 11 acquisition makes a whole lot of sense—\$2.3 billion worth—making this the company's biggest purchase ever and marking its debut into the pet industry.

Procter & Gamble is a major player in retail with its products falling into five segments: laundry and cleaning; paper; beauty care; food and beverage; and health care. So why the pet industry?

A New Racket For Tennis Balls

A new spin on an old favorite puts manufacturers at the top of the dog toy game.

BY KIM CAMPBELL THORNTON

DOGS HAVE been playing with tennis balls for years, but they're no longer limited to plain old white or green balls straight out of a can or off the court. Creative manufacturers took a good idea and made it better, courting strong sales by serving tennis ball toys to an appreciative canine audience.

By adding ropes, throwing straps and hand-grips to increase throwing distance, bright colors to make them easy to find and appealing to the eye, flavors to sweeten a dog's breath, and improving the integrity of the ball, manufacturers have grabbed a market share that may have gone to the likes of Wilson or Dunlop.

Dogs, owners and retailers love them for their interactive utility, bright colors and durability. And, in more than one instance, necessity was the mother of invention.

"My father couldn't throw a tennis ball very far," said Bob Dobiha, president of Eden Prairie, Minn.-based Pet Valet Inc., which makes five tennis ball toy designs. "The [toy] incorporates a bungy cord and tennis ball," Dobiha said. "With an underhand softball-type pitch, the ball goes much farther than you could normally throw it. Handicapped people can use these toys from a sitting position. That's another benefit of the handle; you don't have to touch a sloppy ball."

Tennis Ball Toys continued on page 67



COURTESY OF CANINE HARDWARE

Check out the
Holiday Product
Roundup
starting on Page 10!

To Merge and Multiply

allows owners to toss a standard tennis ball up to 140 feet.

Besides the ability to throw the ball farther, people can use the claw-shaped ball holder to pick up a drooly ball and throw it again without bending over or touching it, Oblack added. It's a favorite with retrievers, of course, and with their people, who can wear out their dogs instead of their arms. Smaller dogs like the product, too, Oblack said. "My brother's Tibetan Terrier loves it."

Bouncing Business

A lost puppy was the impetus behind the design of Oxnard, Calif.-based Farlar International's tennis ball toys. When Farlon Fields and Lara Minassian found the skinny puppy in a park on New Year's Day 1993, they looked for her owners, but deep down they knew she'd been abandoned. Soon they named her Guinevere and were making tennis ball toys for her.

"What we did was take tennis ball toys to a different dimension," Fields said. "We used a lot of different cords, shapes and sizes. We started using multiple tennis balls on flexible or cotton cords, adding rubber toys and making tug toys with one and two tennis balls."

Powered by the owner, the result is an interactive toy that twists, flies, bounces and pulls. This year, Farlar International projects sales of more than \$1 million. That's a lot of tennis balls.

At Ethical Products in Newark, N.J., tennis ball toys are some of the company's best-selling items. The company produces a line of rope toys that incorporate tennis balls, animal shapes with Velcro® closures so tennis balls can be stuffed inside, and the newest product which incorporates tough vinyl with a tennis ball on each end. "It can be used as a toss toy or a tug toy, or the tennis balls can be taken out and thrown by themselves," said marketing manager Susan McCann.

While these toys are definitely different, will consumers really prefer them to just buying a can of tennis balls? "Yes," said Rich DeRosa, owner of 1,000-square-foot Pet Safari in

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